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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/207,972	12/09/1998	MARK I. GARDNER	5500-36100	7507

7590

02/18/2003

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EXAMINER

WARREN, MATTHEW E

ART UNIT

PAPER NUMBER

2815

DATE MAILED: 02/18/2003

#19

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/207,972

Applicant(s)

GARDNER ET AL.

Examiner

Matthew E. Warren

Art Unit

2815

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 16 January 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☐ they raise the issue of new matter (see Note below);
 - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

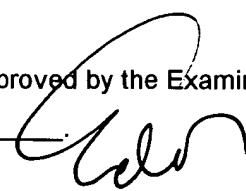
3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: 24-29, 32 and 33.Claim(s) objected to: 22.Claim(s) rejected: 16-21, 23, 30 and 31.

Claim(s) withdrawn from consideration: _____.

8. ☐ The proposed drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s).
10. ☒ Other: See Continuation Sheet


EDDIE LEE
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2800

Continuation of 5. does NOT place the application in condition for allowance because: the arguments are not persuasive. The applicant's request to withdraw the Finality of the previous rejection is denied. The applicant asserts that the rejection of dependent claim 20 is a new grounds of rejection and thus the Office Action cannot be made final. The rejection of claim 20 is not a new grounds of rejection. The same paragraph and reference (Chou) was used in the final rejection as the previous non-final rejection, the only difference being that the head paragraph was changed to correct an erroneous citing of Endo. With respect to the arguments that Kizilyalli does not qualify as prior art, a copy of the Provisional Application No. 60/033,839 (filed on 12/23/96), which is the parent of the CIP in question, is attached to this Action. Page 2, lines 25-33 of the Provisional App. state that a silicon layer 3 is formed on a substrate and then a high dielectric constant layer 4, such as tantalum pentoxide (pg. 3, lines 9-13), is formed on the oxide. A densification process is later performed to "remove traps (defects) in the layers 3-5, and reduce the overall leakage through the layers 3-5" (see pg. 3, lines 34-36). Thus the Provisional App. of Kizilyalli discloses a "low interface trap density layer and a high dielectric constant tantalum pentoxide layer that suppresses leakage current" as stated in the Patent of Kizilyalli (col. 6, lines 49-55). For these reasons, the rejection is still proper and the Office Action will remain final .

Continuation of 10. Other: Copy of Kizilyalli Provisional Application 60/033839 filed on 23 December 1996..